IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4406 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE UNITED INDIA INSURANCE CO. LTD. - Appellant(s)
Versus
ARVINDBHAI BABULAL MODI & 4 - Defendant(s)

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Appearance :
MS AVANI S MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1, 1.2.1, 1.2.2,1.2.3 - 5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/09/2007

ORAL JUDGMENT

1. The short facts of the case is that on 21.9.1992, when the deceased was travelling in the jeep No.GJ 2 9879 going from Deesa to Patan at that time one truck dashed with jeep and the deceased and other persons sitting in the jeep were thrown away. Deceased Dineshbhai sustained to injuries and succumbed to injuries. The claim petition was filed being MACP No.797/1992 (new No.679/2002) for the recovery of compensation of Rs.3 lacs. The Tribunal after judgment awarded the compensation of Rs.1,92,000/-with interest @ 6% and 7.5% p.a. for respective period. Under these circumstances, the present appeal before this Court.

2. Heard Ms. Avani Mehta, learned counsel for the appellant. Considered the Judgment and Award passed by the Tribunal, the written statement as well as statement of co-passenger Jaswantbhai Haribhai and the panchnama which are made available to this Court by the learned counsel during the course of hearing.

3. The only contention raised on behalf of the appellant was that the jeep was used as a taxi vehicle and, therefore, there was a breach of condition by the insured and, therefore, the Insurance Company cannot be made liable by the Tribunal.

4. The examination of the said contention shows that the learned counsel for the appellant has not been able to show any evidence on record regarding

payment of any fare by any of the persons sitting in the jeep to the driver or the owner of the jeep. It is the duty of the Insurance Company to prove the breach of condition. No evidence whatsoever is led on behalf of Insurance Company. Therefore, in normal circumstances, if the Tribunal has held the Insurance Company liable in absence of any proof for breach of condition, on record, such an approach on part of the Tribunal cannot be said to be unjust or unreasonable.

5. The attempt was made by the learned counsel for the appellant to content that in the statement of co-passengers word used is passenger and seven passengers were travelling in the jeep. The learned counsel for the appellant further submitted that the deceased and other passengers were initially waiting for the bus in S.T.Stand and, thereafter travelled in the jeep. In the statement before the police, the co-passengers stated that about seven passengers were sitting in the jeep. All these show that the jeep was being used as Taxi vehicle.

6. Such Contentions cannot be accepted for the reason that breach of condition, is essentially a question of fact which is required to be proved. As per the settled legal position the burden is upon the Insurance Company avoiding the liability on such ground. Further, merely because the word used is passengers in a jeep is not sufficient ground to conclude that the persons travelling in a jeep were fare passengers. Even for non-fare passengers the

language is passenger and not a different language. In any case in the statement of co-passenger, upon which the reliance is placed do not speak for any fare agreed to be paid by him or by any other persons with the driver or owner of the jeep. Merely because somebody has started journey in the jeep from S.T.Bus stand is no ground to conclude that it was a case of Taxi vehicle or it was a case of fare passenger. The aforesaid is coupled with the circumstances that no evidence whatsoever is led on behalf of the Insurance Company. The contention raised in the written statement is not sufficient but there has to be an evidence led for such purpose and it is an admitted position that no evidence is led on behalf of the Insurance Company to prove the breach of the condition. Under these circumstances such attempt cannot be countenanced.

6. No other contention is raised.

7. Hence the appeal is meritless and, therefore, dismissed.

8. The amount deposited with this Court shall be transmitted to the Tribunal.

[JAYANT PATEL, J.]

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